

REQUEST FOR PROPOSALS
FIRE EXTINGUISHER PRODUCTS AND
SERVICES

RFP # FY18-RFP-07



CITY OF CHARLOTTE
NORTH CAROLINA

JANUARY 31, 2018

REQUEST FOR PROPOSALS
RFP # FY18-RFP-07
FIRE EXTINGUISHER PRODUCTS AND SERVICES

January 31, 2018

Dear Sir or Madam:

Charlotte Water, a Department of the City of Charlotte, located in the State of North Carolina, is now accepting Proposals for FIRE EXTINGUISHER PRODUCTS AND SERVICES. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the "RFP"). Please review them carefully.

A **Non-Mandatory** Pre-Proposal Conference for the purpose of reviewing the RFP and answering questions regarding the Services will be held on **Tuesday, February 13, 2018 at 2:30 p.m.**, at 5100 Brookshire Blvd., Charlotte, NC 28216 - 1st Floor Conference Room.

Please bring a copy of the RFP with you at that time.

An electronic copy of the RFP in Microsoft Word format may be obtained by contacting mahenson@charlottenc.gov.

All Proposals are due to Charlotte Water located at 5100 Brookshire Blvd., Charlotte, NC 28216 no later than May 31, 2017 2:00 p.m. EST. Late proposals will not be accepted.

One (1) electronic copy of the Proposal on a flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer, plus four copies of your Proposal must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

Request for Proposals

Attention: Monica Henson

[Name of Company Submitting Proposal]

FIRE EXTINGUISHER PRODUCTS AND SERVICES

RFP # FY18-RFP-07

RFP questions must be directed to Monica Henson, Charlotte Water, Procurement Division, per the enclosed instructions in Section 2.3. The City is an equal opportunity purchaser.

Sincerely,

Monica Henson,
Commodities & Services Contracting Officer

cc: RFP Project Team
RFP file

Checklist for submitting a Proposal:

Step 1-Read the document fully.

Step 2- If you have any questions send them before the deadline listed in **Section 2.3**.

Steps 3-If you plan to submit a Proposal you must follow this checklist, and must include everything detailed below.

Proposal Copies - Please provide the specified number for each format

- ☐ 1 Copy on flash drive
- ☐ 1 Copy marked "Original"
- ☐ 4 Copies marked "Copy"

Proposal Format - Proposals should be formatted as follows:

- ☐ Cover Letter per Section 4.1.1
- ☐ Proposed Solution per Section 4.1.2
- ☐ Section 6, Form 1, Addenda Receipt Confirmation
- ☐ Section 6, Form 2, Proposal Submission
- ☐ Section 6, Form 3, Pricing Worksheet
- ☐ Section 6, Form 4, M/W/SBE Utilization
- ☐ Section 6, Form 5, Company's Background Response
- ☐ Section 6, Form 6, References
- ☐ Section 6, Form 7, Additional Company Question
- ☐ Section 6, Form 8, Safety Assessment
- ☐ Section 6, Form 9, Environmental Purchasing Responses

The above items constitute all that must be included in the Proposal. If awarded a contract, you will be required to provide an insurance certificate that meets or exceeds the requirements set forth in Exhibit A.

It is the Company's responsibility to check <http://charlottewater.org/opportunities> for any addenda or changes to this Project.

TABLE OF CONTENTS

1. INTRODUCTION.....	1
1.1. OBJECTIVE.....	1
1.2. DEFINITIONS.....	1
1.3. ACCURACY OF RFP AND RELATED DOCUMENTS.....	3
1.4. CITY’S RIGHTS AND OPTIONS.....	4
1.5. EXPENSE OF SUBMITTAL PREPARATION.....	4
1.6. PROPOSAL CONDITIONS.....	4
2. PROCUREMENT PROCESS.....	8
2.1. SCHEDULE AND PROCESS.....	8
2.2. INTERPRETATIONS AND ADDENDA.....	8
2.3. PRE-PROPOSAL CONFERENCE.....	8
2.4. SUBMISSION OF PROPOSALS.....	9
2.5. CORRECTION OF ERRORS.....	10
2.6. EVALUATION.....	10
2.7. CONTRACT AWARD BY COUNCIL.....	10
2.8. VENDOR REGISTRATION.....	10
3. SCOPE OF FIRE EXTINGUISHER PRODUCTS AND SERVICES.....	12
3.1. GENERAL SCOPE.....	12
3.3.1. PAY ITEM DESCRIPTIONS.....	17
4. PROPOSAL CONTENT AND FORMAT.....	19
4.1. PROPOSAL CONTENT.....	19
5. PROPOSAL EVALUATION CRITERIA.....	21
5.1. QUALIFICATIONS AND EXPERIENCE.....	21
5.2. PROJECT APPROACH / PROPOSED SOLUTION.....	21
5.3. COST EFFECTIVENESS AND VALUE.....	21
5.4. M/W/SBE SUBCONTRACTOR UTILIZATION.....	21
5.5. ACCEPTANCE OF THE TERMS OF THE CONTRACT.....	21
REQUIRED FORM 1 - ADDENDA RECEIPT CONFIRMATION.....	23
REQUIRED FORM 2- PROPOSAL SUBMISSION FORM.....	24
REQUIRED FORM 3 - PRICING WORKSHEET.....	26
REQUIRED FORM 4 – M/W/SBE UTILIZATION.....	28
REQUIRED FORM 5 – COMPANY’S BACKGROUND RESPONSE.....	30
REQUIRED FORM 6 – REFERENCES.....	32
REQUIRED FORM 7 – ADDITIONAL COMPANY QUESTIONS.....	33
REQUIRED FORM 8.....	34
REQUIRED FORM 9 – ENVIRONMENTAL PURCHASING RESPONSES.....	35
EXHIBIT A –CONTRACT TERMS AND CONDITIONS.....	37

Section 1

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Company and Proposed Solution will best meet the City's needs for Fire Extinguisher Products and Service. This includes Fire Equipment, Maintenance, Training, and Inspection Services. Please See Section 3 for Scope of Service.

1.2. Definitions.

As used in this RFP, the following terms shall have the meanings set forth below:

Acceptance: Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in the Contract.

Affiliates: Refers to all departments or units of the City and all other governmental units, boards, committees or municipalities for which the City processes data or performs services.

Biodegradable: Refers to the ability of an item to be decomposed by bacteria or other living organisms.

Charlotte Business Inclusion (CBI): Refers to the Charlotte Business Inclusion office of the City of Charlotte.

Charlotte Combined Statistical Area (CSA): Refers to the Charlotte-Gastonia-Salisbury Combined Statistical Area consisting of; (a) the North Carolina counties of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union; and (b) the South Carolina counties of Chester, Lancaster, and York; a criteria used by Charlotte Business INclusion to determine eligibility to participate in the program.

City: Refers to the City of Charlotte, North Carolina.

City Project Manager: Refers to a specified City employee representing the City's best interests in this Project.

Company: During the solicitation process, refers to a company that has interest in providing the Services. After the solicitation process, refers to a company that has been selected by the City to provide the Services.

Company Project Manager: Refers to a specified Company employee representing the best interests of the Company for this Project.

Contract: Refers to a written agreement executed by the City and Company for all or part of the Services.

Deliverables: Refers to all tasks, reports, information, designs, plans, and other items that the Company is required to deliver to the City in connection with the Contract.

Department: Refers to a department within the City of Charlotte.

Documentation: Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the

Section 1

Introduction and General Information

	Deliverables or Services or any component thereof, and which are provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, and logic diagrams.
<i>Environmentally Preferable Products:</i>	Refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serves the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
<i>Evaluation Committee:</i>	Refers to a City appointed committee that will evaluate Proposals and identify the Company(-ies) best meeting the needs of the City.
<i>Milestones:</i>	Refers to an identified deadline for the completion of specific Services and/or the Acceptance of identified Deliverables, as specified in this RFP.
<i>Minority Business Enterprise/MBE:</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are members of one of the following groups: African American or Black, Hispanic, Asian, Native American or American Indian; and (c) is headquartered in the Charlotte Combined Statistical Area.
<i>MWSBE:</i>	Refers to SBEs, MBEs and WBEs, collectively.
<i>MWSBE Goal:</i>	If an RFP or Contract has separate Subcontracting Goals for MBEs, WBEs, and/or SBEs, the term MWSBE is a shorthand way to refer collectively to all MBE, WBE, and SBE Goals set for the RFP. In some instances, the City may set one combined goal for MBEs, WBEs, and/or SBEs, in which event the term MWSBE Goal refers to that one, combined goal. In the latter instance, calculated as a percentage, the MWSBE Goal represents the total dollars spent with MBEs, WBEs, and SBEs as a portion of the total Proposal amount, including any contingency.
<i>Post-Consumer Recycled Material:</i>	Refers to material and by-products which have served their intended end-use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
<i>Project:</i>	Refers to the City's need for a service provider to provide FIRE EXTINGUISHER PRODUCTS AND SERVICES for the City.

Section 1

Introduction and General Information

<i>Project Plan:</i>	Refers to the detailed plan for delivery of the Services as described in Section 3, in the form accepted in writing by the City in accordance with the terms of this RFP and resultant Contract.
<i>Proposal:</i>	Refers to the proposal submitted by a Company for the Services as outlined in this RFP.
<i>Recyclability:</i>	Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or used in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable.
<i>Services:</i>	Refers to the FIRE EXTINGUISHER PRODUCTS AND SERVICES as requested in this RFP.
<i>Small Business Enterprise/SBE:</i>	Refers to a business enterprise that is certified by the City of Charlotte under Part E of the CBI Policy as meeting all of the requirements for SBE certification.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this RFP, including any addenda; (ii) the Documentation; and (iii) any functional and/or technical specifications that are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
<i>Subcontracting Goals:</i>	Refers to the SBE, MBE, WBE, and MWSBE Goals established by the City for an RFP and resulting Contract.
<i>Women Business Enterprise (WBE):</i>	Refers to a business enterprise that: (a) is certified by the State of North Carolina as a Historically Underutilized Business (HUB) within the meaning of N.C. Gen. Stat. § 143-128.4; (b) is at least fifty-one percent (51%) owned by one or more persons who are female; and (c) is headquartered in the Charlotte Combined Statistical Area.
<i>Work Product:</i>	Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this RFP, and all partial, intermediate or preliminary versions of any of the foregoing.

1.3. Accuracy of RFP and Related Documents.

Each Company must independently evaluate all information provided by the City. The City makes no representations or warranties regarding any information presented in this RFP, or otherwise made available during this procurement process, and assumes no responsibility for conclusions or interpretations derived from such

Section 1

Introduction and General Information

information. In addition, the City will not be bound by or be responsible for any explanation or conclusions regarding this RFP or any related documents other than those provided by an addendum issued by the City. Companies may not rely on any oral statement by the City or its agents, advisors, or consultants.

If a Company identifies potential errors or omissions in this RFP or any other related documents, the Company should immediately notify the City of such potential discrepancy in writing. The City may issue a written addendum if the City determines clarification necessary. Each Company requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in RFP Section 2.

1.4. City's Rights and Options.

The City reserves the right, at the City's sole discretion, to take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City, including:

- 1.4.1. To supplement, amend, substitute, or otherwise modify this RFP, including the schedule, or to cancel this RFP, at any time;
- 1.4.2. To require any Companies to supplement or clarify its Proposal or provide additional information relating to its Proposals;
- 1.4.3. To investigate the qualifications, experience, capabilities, and financial standing of each Company submitting a Proposal;
- 1.4.4. To waive any defect or irregularity in any Proposal received;
- 1.4.5. To reject any or all Proposals;
- 1.4.6. To share the Proposals with City employees and contractors in addition to the Evaluation Committee as deemed necessary by the City;
- 1.4.7. To award all, none, or any part of the Services and enter into Contracts with one or more of the responding Companies deemed by the City to be in the best interest of the City, which may be done with or without re-solicitation;
- 1.4.8. To discuss and negotiate with any Company(-ies) their Proposal terms and conditions, including but not limited to financial terms; and
- 1.4.9. To terminate discussions and negotiations with any Company at any time and for any reason.

1.5. Expense of Submittal Preparation.

The City accepts no liability, and Companies will have no actionable claims, for reimbursement of any costs or expenses incurred in participating in this solicitation process. This includes expenses and costs related to Proposal submission, submission of written questions, attendance at pre-proposal meetings or evaluation interviews, contract negotiations, or activities required for contract execution.

1.6. Proposal Conditions.

The following terms are applicable to this RFP and the Company's Proposal.

- 1.6.1. RFP Not an Offer.

Section 1

Introduction and General Information

This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and the Company execute a Contract. No recommendations or conclusions from this RFP process concerning the Company shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

- 1.6.2. Trade Secrets and Personal Identification Information /Confidentiality. Upon receipt at the Procurement Management Division, all materials submitted by a Company (including the Proposal) are considered public records except for (1) material that qualifies as “trade secret” information under N.C. Gen. Stat. § 66-152 et seq. (“Trade Secrets”) or (2) “personal identification information” protected by state or federal law, to include, but not be limited to, social security numbers, bank account numbers, and driver’s license numbers (“Personal Identification Information” or “PII”). After the Proposal due date, the Evaluation Committee, other City staff, and members of the general public who submit public records requests may review the Proposal.

The public disclosure of the contents of a Proposal or other materials submitted by a Company is governed by N.C. Gen. Stat. §§ 132 and 66-152 et seq.. If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must be specifically and clearly identified in accordance with this Section 1.6.2.

Any Trade Secrets or PII submitted by a Company must be clearly segregated from the rest of the Proposal. For hard copy Proposals, it must be submitted in a separate, sealed envelope, marked either “Personal Identification Information – Confidential” or “Trade Secret—Confidential and Proprietary Information.” For electronic submissions it must also be submitted on a separate CD or flash drive. In both hard copy and electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

By submitting a Proposal, each Company agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

Furthermore, each Company agrees to indemnify and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as a trade secret. The City may disqualify and Company that designates its entire Proposal as a trade secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret.

- 1.6.3. Amendments to RFP. If the City amends this RFP, addenda will be posted to <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.a>

Section 1

Introduction and General Information

spx. Companies are required to acknowledge receipt of each addendum by including the Addenda Receipt Form (Section 6, Form 1) with their Proposals.

- 1.6.4. Proposal Terms Firm and Irreversible.
The signed Proposal shall be considered a firm offer on the part of the Company. The City reserves the right to negotiate price and other terms. All Proposal elements (including all statements, claims, declarations, prices, and specifications) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Company chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City's election.
- 1.6.5. Proposal Binding for 180 Days.
Section 6, Form 3 contains a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Company.
- 1.6.6. All prices quoted shall be firm and fixed for the first Contract term. The City shall have the option to accept subject to exception by Contract. Please see Section 4.2 Price Adjustments within Exhibit A
- 1.6.7. Charlotte Business INclusion Program.
Pursuant to Charlotte City Council's adoption of the Charlotte Business INclusion (CBI) Policy, the CBI program promotes diversity, inclusion, and local business opportunities in the City's contracting and procurement process for Minority, Women, and Small Business Enterprises (MWSBEs) headquartered in the Charlotte Combined Statistical Area (CSA). The CBI Policy is posted at: www.charlottebusinessinclusion.com.

The City is committed to promoting opportunities for maximum participation of certified MWSBEs on City funded contracts at both the Prime and Subcontract level. For MWSBE participation to count towards a Goal, MWSBEs must meet both the certification and geographic requirements as detailed throughout this solicitation and in the CBI Policy.
- 1.6.8. Equal Opportunity.
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Companies regardless of race, color, religion, age, sex, and national origin or disability.
- 1.6.9. Use of City's Name.
No advertising, sales promotion, or other materials of the Company or its agents or representatives may identify or reference the City in any manner absent the prior written consent of the City.
- 1.6.10. Withdrawal for Modification of Proposals.

Section 1

Introduction and General Information

Companies may change or withdraw a previously-submitted Proposal at any time prior to the Proposal due date. Only formal written requests addressed in the same manner as the Proposal and received by the City prior to the Proposal due date will be accepted. The request must be in a sealed envelope that is plainly marked “**Modifications to Proposal.**” No oral modifications will be allowed. If the Company complies with this Section, after the Proposal due date, the Proposal, will be withdrawn or corrected in accordance with the written request(s).

- 1.6.11. No Bribery.
In submitting a response to this RFP, each Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Contract.
- 1.6.12. Fair Trade Certifications.
By submitting a Proposal, the Company certifies that:
- The prices in its Proposal have been arrived at independently, without consultation, communication, or agreement with anyone, as to any matter relating to such prices for the purpose of restricting competition;
 - Unless otherwise required by law, the prices quoted in its Proposal have not been knowingly disclosed by the Company and will not knowingly be so disclosed prior to the Proposal due date; and
 - No attempt has been made or will be made by the Company to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.
- 1.6.13. Companies’ Obligation to Fully Inform Themselves.
Companies or their authorized representatives must fully inform themselves as to all conditions, requirements, and specifications of this RFP before submitting Proposals. Failure to do so will be at the Company’s own risk.

Section 2

Procurement Process

2. PROCUREMENT PROCESS.

This Section 2 contains information about the procurement process for this Project.

2.1. Schedule and Process.

The following chart shows the schedule of events for the conduct of this RFP. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
January 31, 2018	<i>Issuance of RFP.</i> The City issues this RFP.
February 13, 2018	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at 2:30 p.m. EST
February 16, 2018	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by 1:00 p.m. EST
March 13, 2018	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. EST Charlotte Water, 5100 Brookshire Boulevard Charlotte, NC 28216.
March 19, 2018 - March 23, 2018	<i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities with Companies.
May 14, 2017	<i>Contract Award by Council.</i>

2.2. Interpretations and Addenda.

To ask questions about this RFP, please submit a question in writing to the Procurement Officer at the e-mail address listed below. Companies should refrain from contacting City staff prior to the Proposal deadline. **The City is not bound by any statements, representations or clarifications regarding this RFP other than those provided in writing by the Procurement Officer.**

Monica Henson
Charlotte Water
5100 Brookshire Blvd
Charlotte, NC 28216
RFP # FY18-RFP-07
Fax: 704-632-8536
E-mail: mahenson@charlottenc.gov

After the Pre-Proposal Conference, questions must be submitted in writing by the deadline stated in Section 2.1. In the case of questions not submitted by the deadline, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal deadline. When responding to Company questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <http://charlottewater.org/opportunities>. Companies are required to acknowledge their receipt of each addenda by including in the Proposal a completed Addenda Receipt Form (Section 6, Form 1).

2.3. Pre-Proposal Conference.

Section 2

Procurement Process

A Non-Mandatory Pre-Proposal Conference will be conducted on **TUESDAY, FEBRUARY 13, 2018 at 2:30 PM EST**. The meeting will be held at the Charlotte Water, 5100 Brookshire Blvd., Charlotte, North Carolina 28216, 1st Floor Small Conference.

While attendance at the Pre-Proposal Conference is not mandatory, all interested Companies are encouraged to attend. If special accommodations are required for attendance, please notify Monica Henson in advance of the conference date and time identifying the special accommodations required.

2.4. Submission of Proposals.

Proposals must be in the format specified in Section 4 of this RFP. One (1) electronic copy on a flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer, plus four copies shall be submitted to the address listed in Section 2.3 above by **MARCH 13, 2018 on or before but no later than 2:00 PM EST**. The original Proposal and each of the copy/ies shall be complete and unabridged, and shall not refer to any other copy of the signed and sealed original for any references, clarifications, or additional information.

When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. **Proposals sent by fax or email will not be accepted.**

Proposals may be mailed, or placed in the designated locked Procurement box in the 2nd Floor Lobby at the above address. Proposals must be submitted in a sealed envelope or box with the following information clearly notated on the face of it:

Proposals ENCLOSED
RFP #FY18-RFP-07
Fire Extinguisher Product & Services
Name of Proposer
Address of Proposer

If submitted via mail (by a third party vendor): the outside sealed Proposals envelope or box must contain the aforementioned information clearly notated on the face of it.

If hand delivered via depositing in the designated box, the Proposals envelope must be placed inside the box designated for SERVICES/CONSTRUCTION/COMMODITIES located in the 2nd Floor Lobby. Packages must be the following dimensions or smaller: 12"W x 8.25"H x 11.5"D. If the package is larger, it must be separated into smaller packages with the outside of the package clearly marked "PACKAGE X OF X". Proposer shall allow enough time to sign in at the reception desk and obtain a visitor badge in order to access the 2nd floor.

No responsibility will be attached to the City for prematurely opening Proposals not properly addressed or identified.

Each Proposer is solely responsible for the timely delivery of their Proposals. Proposers accept all risks of late delivery regardless of fault. Any Proposals received after the date and time specified, regardless of the mode of delivery, shall not be considered. The Procurement Officer will confirm receipt of Proposal to all Proposers via email within 24 hours of the Proposal deadline.

Section 2

Procurement Process

Do not arrive at Charlotte Water Procurement Unit on the Proposal due date for the purposes of reviewing your competitors' Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved.

2.5. Correction of Errors.

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Company further agrees that in the event of any obvious errors, the City reserves the right to waive such errors in its sole discretion. The City, however, has no obligation under any circumstances to waive such errors.

2.6. Evaluation.

As part of the evaluation process, the Evaluation Committee may engage in discussions with one or more Companies. Discussions might be held with individual Companies to determine in greater detail the Company's qualifications, to explore with the Company the scope and nature of the required contractual Services, to learn the Company's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to the City.

The City may in its discretion require one or more Companies to make presentations to the Evaluation Committee or appear before the City and/or its representatives for an interview. During such interview, the Company may be required to orally and otherwise present its Proposal and to respond in detail to any questions posed. Additional meetings may be held to clarify issues or to address comments, as the City deems appropriate. Companies will be notified in advance of the time and format of such meetings.

Since the City may choose to award a Contract without engaging in discussions or negotiations, the Proposals submitted shall state the Company's best offer for performing the Services described in this RFP.

2.7. Contract Award by Council.

As soon as practical after opening the Proposals, the name of the apparent successful Company will be submitted to the Council for final approval of award and the Procurement Officer will provide Contract documents to the Company. In the event the Council approval is not received within one hundred eighty (180) calendar days after opening of the Proposals, the Company may request that it be released from the Proposal.

2.8. Vendor Registration.

The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Companies. Although Companies are not required to be registered in the City's vendor registration system prior to submitting a Proposal, in order to execute a contract with the City and receive payment from the City, all Companies must register with the City's vendor registration system.

Your registration provides the City with baseline information for your company including location, contact and demographic information, as well as your areas of expertise with specific commodity and/or service descriptions. You will also have the opportunity to complete any applicable certifications if your company desires to establish itself as an SBE, MBE, or WBE. The link below will provide you with the opportunity to complete your registration on-line with the City.

Section 2

Procurement Process

<http://charlottenc.gov/vendors>

Section 3

Scope of Services

3. SCOPE OF FIRE EXTINGUISHER PRODUCTS AND SERVICES.

3.1. General Scope.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Service Provider will best meet the City's needs, with regards to Fire Equipment Maintenance, Training, and Inspection Services.

The scope of this contract shall be to provide full comprehensive inspection, testing, maintenance, training, and repair services for fire extinguishers within the Charlotte Water facilities.

Current Location includes the following:

Location Name	Address
Sugar Creek Wastewater Treatment Plant	5301 Closeburn Road Charlotte, NC
Mallard Creek Wastewater Treatment Plant	12400 US Highway 29 Charlotte, NC
McAlpine Wastewater Treatment Plant	12701 Lancaster Hwy Pineville, NC
Irwin Creek Wastewater Treatment Plant	4000 Westmont Drive Charlotte, NC
McDowell Creek Wastewater Treatment Plant	4901 Neck Road Huntersville, NC
Field Operations Zone 1	11609 Hord Road Huntersville, NC
Field Operations Zone 2	5730 General Commerce Drive Charlotte, NC
Field Operations Zone 3	12131 Park Road Charlotte, NC
Field Operations Zone 4	4100 W. Tyvola Road Charlotte, NC
Franklin Water Treatment Plant	5200 Brookshire Blvd. Charlotte, NC
Vest Water Treatment Plant	820 Beatties Ford Road Charlotte, NC
Catawba Pump Station	Pump Station Road Charlotte, NC
Lee S. Duke	7980 Babe Stillwell Rd Huntersville, NC
Environmental Service Facility	4222 Westmont Dr. Charlotte, NC
Engineering & Customer Service Building	5100 Brookshire Blvd. Charlotte, NC

For each location, a Charlotte Water site manager will be provided to the Service Provider.

Section 3

Scope of Services

Additional locations, including remote lift stations, may be added throughout the contract term. Service Provider will be notified and an amendment will be executed prior to service beginning.

Equipment which requires service, inspection and employee training includes but not limited to the following:

- Fire Extinguishers:
 - Type ABC
 - Type CO2
 - Type Clean Agent
- Extinguisher Hangers/Boxes, Mounting hardware, labels/tags, and extinguisher numbers.

The Service Provider(s) shall dedicate two service technicians to be Charlotte Water main point of contact, provide service, and education. This is to insure all employees and their locations receive the same level of service and education.

The work to be performed by the selected vendor consist of furnishing all material, including but not limited to mounting hardware, labels, tags, covers, enclosures, etc., labor, supervision, signage, tools, supplies, and equipment necessary to provide a full maintenance service which includes all inspections, adjustments, tests, parts and/or replacement components and repairs which will keep the fire equipment in continuous use at their established capacity and efficiency and for their intended purposes.

All maintenance adjustments and repairs shall be in compliance with the latest NFPA Standard for Fire Extinguishers, Fire Hoses Inspection, including all supplements, and any additional NC State and/or local requirements.

Minimum standards and requirements for services to be rendered shall be performed in accordance with the specifications and relative time periods. Where there is no specific requirement for a preventive maintenance procedure, the original equipment manufacturer (O.E.M.) standard shall be employed unless there is no relative documentation available.

Currently know extinguishers are as follows:

Type	Qty
ABC	
10 lbs	345
14 lbs	1
15 lbs	14
16 lbs	105
17 lbs	8
2.5 lbs	2
20 lbs	6
20lbs	2
26 lbs	1
28 lbs	1

Section 3

Scope of Services

29 lbs	1
31 lbs	7
32 lbs	1
5 lbs	68
6 lbs	1
8 lbs	17
9 lbs	1
High flow	2
BC	
10 lbs	13
15 lbs	6
20 lbs	2
26 lbs	5
5 lbs	2
CA	
10 lbs	1
Clean Agent	
20 lbs	2
5 lbs	6
CO2	
20 lbs	2
5 lbs	6
Halotron	
10 lbs	5
5 lbs	5
Purple K Dry Chemical	
20 lbs	1

3.2. Full Systematic Inspection, Maintenance, Repair, and Training Services

3.2.1. Inspections:

Annual and 6 year inspections of all fire extinguishers located in Charlotte Water locations, and other Charlotte Water “Off Site” locations are included.

Site Managers have the right to request the service provider to conduct monthly inspection services of extinguishers. Currently, McAlpine is the only facility which will request monthly inspection services by the service provider.

All work surrounding inspections will be performed in accordance with the standards documented in NFPA 10 Standard for Portable Fire Extinguishers.

3.2.2. Fire Equipment Database:

Within Sixty (60 days) of award of this contract, the service provider shall submit to the designated Safety Coordinator and all designated site managers a comprehensive and all inclusive report providing the following information on each fire extinguisher equipment:

- Type (ABC, CO2, etc)
- Size
- Serial Number
- Last Date Test
- Test Due Date
- Location within the building
- Notation of general needs regarding repair or upgrade

The above mentioned database is listed as PID 4: Fire Equipment Database Set Up Fee.

3.2.3. Service, Repairs/Replacements:

Provide all labor and materials required to service and maintain fire equipment and signage within Charlotte Water.

Service includes inspection, cleaning, service, tagging, recharging, and hydrostatic testing on ABC, Dry Chemical, CO2, types of extinguishers, and fire hoses.

All Charlotte Water locations will require a documented annual service report for all extinguishers. McAlpine Creek WWTP will require a monthly service reports.

Any fire extinguisher deemed to be out of order or unserviceable during the inspection will provide information to the designated site manager.

Charlotte Water will require all outdoor extinguishers to be protected with appropriate cover at all times by the service provider.

Service Provider shall provide a temporary replacement while the original extinguisher is being repaired or replaced

Designated site manager will make the final decision regarding if the extinguisher will be repaired or replaced.

Replacement Extinguishers will be new. Pricing shall include inspections, certification, and mounting bracket (if required).

Replacement of Fire house shall include all labor and material as well as pressure testing, when required.

All Charlotte Water locations will require an appropriate number of spare extinguishers on site at all times as recommended by the service provider for normal usage and emergencies.

Charlotte Water will require that new facilities, locations, sites have appropriate type/style extinguishers to be installed as needed by the service provider.

Site Manager or their designee will make determination and inform the Service Provider of all needs.

3.2.4. Maintenance:

Maintenance includes maintaining equipment and the continual upkeep of the Fire Equipment Database; includes keeping accurate record of the equipment type, Serial Number, Test Dates, and the location of equipment.

Vendor shall provide the Fire Equipment Database on Microsoft Excel. This database will be created and maintained by the service provider yet the City of Charlotte will retain ownership of the database and details obtained through this process.

MSDS sheets for all products used must be provided to each site at the time recharging is done

3.2.5. Training:

Training for around 850 Charlotte Water employees include but not limited to the following:

- Live Fire Practical/ Classroom
- Electronic Fire Practical Classroom
- Classroom Refresher
- All training needs associated with the training (materials, computer, etc.)

Designated Site Managers will determine which training needs are best for their location and staff.

The following basic concepts for utilizing a fire extinguisher are to be covered during the training session:

- An explanation of fire itself, defined as a 3 part reaction involving fuel, heat and oxygen. Fire extinguishers remove one of the 3 parts of this reaction.
- The classroom session will educate the attendees to distinguish classes of fires (A, B, C, or D).
- The classroom session will also explain how to determine the right type and size of extinguisher needed to put out a particular fire.
- A step by step review will explain how to utilize an extinguisher via the pull, aim, squeeze and sweep (P.A.S.S.) approach.
- An opportunity will be offered to each attendee to put out a live fire in a burn pit utilizing a fire extinguisher.
- Train staff on proper method(s) for monthly fire extinguisher inspections.

3.2.6. Materials and Workmanship: All materials and parts are to be new and of the best quality of the kind specified. Installation of such materials shall be accomplished in a neat workmanlike manner. In case the Vendor should receive written notification from the Facility Manager stating the presence of inferior, improper, or unsound materials or workmanship, the Vendor shall, within twenty-four (24) hours, proceed

to remove such work or materials and make good all other work or materials damaged thereby. If the Facility Manager permits said work or materials to remain, the Facility Manager shall be allowed the difference in value or shall, at its election, have the right to have said work or materials repaired or replaced as well as the damage caused thereby, at the expense of the Vendor, at any time during the Contract term; and neither payments made to the Vendor, nor any other acts of the Facility Manager shall be construed as evidence of acceptance and waiver.

- 3.2.7. Meetings:** Vendors' personnel may meet with the Facility Manager quarterly to review the reports submitted under Section 2.12, the Vendor's compliance with the minimum monthly maintenance hour provision of the specification and any other Contract related issues deemed appropriate by the Facility Manager. Each calendar year fourth quarter meeting will also include a review of the reports submitted under Section 2.14. Vendors' personnel shall also be required to meet with the Facility Manager to resolve any Contract related issues that arise during the administration of this Agreement on an as needed basis.

The Vendor shall attend monthly, or at any time during the term of this Contract, upon written request of the Facility Manager, callback reduction meetings. Vendor shall provide reports including analytical data and charts to facilitate review of callbacks at these meetings.

3.3. Pay Item Description (PID):

3.3.1. Pay Item Descriptions

Pay items have been set up for all work that is measurable. The submittal for the pay item shall include the cost of all material (must be new) needed, labor, equipment, taxes, and all else required to complete that pay item as specified.

Additional costs will not be permitted for the pay items provided; unless otherwise specified.

PID 1: List of Known Fire Equipment: A list of various known Fire Equipment which Charlotte Water has in its procession and in need of service.

This is paid based on the Unit of Measure listed on the Price Sheet.

PID 2: Mark-Up Percentage: For items which are paid via percentage (%) mark-up for consumables, Service Provider must provide actual receipt of product purchased with invoice in order to be paid.

Failure to provide proper documentation will delay Service Provider's payment.

Materials are paid at the same mark-up rate that is provided on Exhibit A. No additional rate increases are allowed.

PID 3: Service Call: Designated site managers will have the ability to call service provider to visit the location when in need a product(s) are in need of

Section 3

Scope of Services

service or repair. Training and Quarterly meetings are not considered a service call.

This is paid on a per each (Ea) basis.

PID 4: Fire Equipment Database Set Up Fee: Within sixty days of the contract being established, the Service Provider will create and establish an Equipment Database as described in 3.6.2. Database will be updated at time of service.

This is paid as a total job for all locations and products.

PID 5: Training Services: Training per location per occurrence to provide the fire training to Charlotte Water Employees. Price shall include the specifications listed in 3.5 that includes but not limited to instructor's time, materials, training guides, and training certificate for employees file.

This is paid on a per employee.

Section 4

Proposal Content and Format

4. PROPOSAL CONTENT AND FORMAT.

The City desires all Proposals to be identical in format in order to facilitate comparison. While the City's format may represent departure from the Company's preference, the City

- a. Cover letter;
- b. Proposed Solution;
- c. The "Addenda Receipt Confirmation" set forth in Section 6, Form 1;
- d. The "Proposal Submission" set forth in Section 6, Form 2;
- e. The "Pricing Worksheet" set forth in Section 6, Form 3;
- f. The "M/W/SBE Utilization" form set forth in Section 6, Form 4;
- g. The "Company's Background Response" form set forth in Section 6, Form 5;
- h. The "References" set forth in Section 6, Form 6;
- i. The "Additional Company Questions" set forth in Section 6, Form 7;
- j. The "Safety Assessment" set forth in Section 6, Form 8; and
- k. The "Environmental Purchasing Responses" set forth in Section 6, Form 9

The City encourages Proposals to be compatible with the City's waste reduction goals and policies. Therefore, it is desired that all responses meet the following requirements:

- All Proposals be printed 8 1/2" x 11" format with all standard text no smaller than eleven (11) points;
- All copies be printed double-sided;
- All copies be printed on recycled paper (at least 30% post-consumer recovered material and at least 30% total recovered material);
- Unless necessary, all Proposal originals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as 3- ring binders, plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Glued materials, paper clips, and staples are acceptable; and
- Materials be submitted in a format that allows for easy removal and recycling.

Proposals must also include a CD or flash drive including the entire Proposal in a searchable format such as MS Word or Adobe Acrobat.

Companies are required to organize the information requested in this RFP in accordance with the format and instructions outlined above and detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. The Company, however, may reduce the repetition of identical information within several sections of the Proposal by making the appropriate cross-references to other sections of the Proposal. Appendices for certain technical or financial information may be used to facilitate Proposal preparation.

4.1. Proposal Content.

4.1.1. Cover Letter.

The Proposal must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents. The cover letter shall provide the name, address, telephone and facsimile numbers of the Company along with the name, title, address, email address, telephone and facsimile numbers of the executive that has the authority to contract with the City. The cover letter shall present the

Section 4

Proposal Content and Format

Company's understanding of the Project and a summary of the approach to perform the Services.

4.1.2. Proposed Solution.

Given the purpose of this project and the City's goals as stated in this RFP, provide a creative solution to meet such goals. **For each component of the Project described in Section 3, state whether and how your Proposed Solution complies as well as any additional information requested.** If you wish to add supplemental information, it shall be labeled "Supplemental Information."

4.1.3. Required Forms.

To be deemed responsive to this RFP, Companies must complete, in detail, all Proposal Forms listed in this Section 4, items numbered c through k.

5. PROPOSAL EVALUATION CRITERIA.

Proposals will be evaluated based on the Company's ability to meet the performance requirements of this RFP. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Company to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The Company's Proposal will be the primary source of information used in the evaluation process. Proposals must contain information specifically related to the proposed Services and requested herein. Failure of any Company to submit information requested may result in the elimination of the Proposal from further evaluation.

Proposals will be assessed to determine the most comprehensive, competitive and best value solution for the City based on, but not limited to, the criteria below. The City reserves the right to modify the evaluation criteria or waive portions thereof. Proposals will be evaluated on the following major categories:

- a. Qualifications and Experience;
- b. Project Approach and Proposed Solution;
- c. Cost Effectiveness and Value;
- d. M/W/SBE inclusion efforts; and
- e. Acceptance of the Terms of the Contract

5.1. Qualifications and Experience

Companies will be evaluated on the background and experience information provided in Section 6, Form 5.

5.2. Project Approach / Proposed Solution.

Companies will be evaluated based upon their understanding, experience and qualifications in performing the same or substantially similar Services, as reflected by its experience in performing such Services. The evaluation will include references regarding work for organizations with needs similar to the City's, and the feasibility of the Company's approach for the provision of the Services.

5.3. Cost Effectiveness and Value.

Under this criterion, Proposals will be compared in terms of the most reasonable and effective pricing options. The Evaluation Committee will also take into consideration any indirect costs associated with the Services and administration of the Contract.

5.4. M/W/SBE Subcontractor Utilization.

The City maintains a strong commitment to the inclusion of M/W/SBEs in the City's contracting and procurement process. For the purposes of this RFP, the City will consider a Company's M/W/SBE certification and/or M/W/SBE subcontracting inclusion efforts. To count towards a Department M/W/SBE Goal, M/W/SBE certified Companies and/or their M/W/SBE subcontractors must meet the following certification criteria prior to Proposal submission:

- Be designated as a City certified SBE; and/or
- Be designated as a City registered MBE or WBE

MWSBE utilization is only one (1) criterion considered in the totality of all criteria listed in this Section 5.

5.5. Acceptance of the Terms of the Contract.

Section 5

Evaluation Criteria

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the sample contract language provided in Exhibit A.

Section 6
Required Forms

REQUIRED FORM 1 - ADDENDA RECEIPT CONFIRMATION

RFP # FY18-RFP-07

FIRE EXTINGUISHER PRODUCTS AND SERVICES

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to <http://charlottewater.org/opportunities> .

ADDENDUM #:

**DATE ADDENDUM
DOWNLOADED FROM CITY OF
CHARLOTTE CONTRACT
OPPORTUNITIES WEBSITE:**

I certify that this proposal complies with the Specifications and conditions issued by the City except as clearly marked in the attached copy.

Authorized Signature

Date

Print Name

Title

Company Name

REQUIRED FORM 2- PROPOSAL SUBMISSION FORM

RFP # FY18-RFP-07

FIRE EXTINGUISHER PRODUCTS AND SERVICES

This Proposal is submitted by:

Company Name: _____

Representative (printed): _____

Address: _____

City/State/Zip: _____

Email address: _____

Telephone: _____
(Area Code) Telephone Number

Facsimile: _____
(Area Code) Fax Number

The representative signing above hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Service Provider on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Service Provider or terminate any contract awarded on such bid.

Section 6

Required Forms

5. As part of its Proposal, the Service Provider shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Service Provider in a legal or administrative proceeding alleging that Service Provider discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.
7. It is understood by the Company that the City reserves the right to reject any and all Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this RFP.
8. This Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the Sample Terms as included herein as Exhibit A. As such, I have elected to do the following:

___ Include exceptions to the sample contract in the following section of my Proposal: _____

___ Not include any exceptions to the Sample Terms.

Authorized Signature

Date

Print Name

Title

Company Name

Section 6 Required Forms

REQUIRED FORM 3 - PRICING WORKSHEET

RFP # FY18-RFP-07

FIRE EXTINGUISHER PRODUCTS AND SERVICES

Companies shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars rounded to the nearest quarter of a dollar. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs that the City will be responsible for.**

For purposes of this RFP, assume an initial term of Two (2) years, with the City having an option to renew for One (1) additional consecutive two (2) year terms thereafter.

PID 1: List of Known Fire Equipment.

Item	Description	Unit of Measure	Proposed Brand/Model	Price
1	Monthly Inspection & Service on Extinguisher	Each (ea)		\$
2	Annual Inspection & Service on Extinguisher	Each (ea)		\$
3	Six Year Inspection & Service on Extinguisher	Each (ea)		\$
4	Recharging of Extinguisher	Per pound		\$
5	Hydro-Test of Extinguisher	Each (ea)		\$
6	Three Year Inspection of Fire House	Each (ea)		\$
7	Replacement Fire hose to fit 1-1/2" pipe	25 ft		\$
8	New Extinguisher: ABC, 2.5 lbs.	Each (ea)		\$
9	New Extinguisher: ABC, 5lbs	Each (ea)		\$
10	New Extinguisher: ABC, 10 lbs	Each (ea)		\$
11	New Extinguisher: ABC, 15 lbs	Each (ea)		\$
12	New Extinguisher: ABC, 20 lbs	Each (ea)		\$
13	New Extinguisher: CO2, 2.5 lbs	Each (ea)		\$
14	New Extinguisher: CO2, 5 lbs	Each (ea)		\$
15	New Extinguisher: CO2, 10 lbs	Each (ea)		\$
16	New Extinguisher: CO2, 15 lbs	Each (ea)		\$
17	New Extinguisher: CO2, 20 lbs	Each (ea)		\$
18	Cabinet, Surface Mount	Each (ea)		\$
19	Cabinet, Flush Mount	Each (ea)		\$
20	Cabinet Replacement Door	Each (ea)		\$
21	Sign, Fire Extinguisher	Each (ea)		\$

Section 6
Required Forms

PID 2: Materials Mark-Up Percentage: _____

PID 3: Service Call: _____

PID 4: Database Set Up Fee: _____

PID 5: Fire Equipment Training: _____/per hour

Section 6

Required Forms



REQUIRED FORM 4 – M/W/SBE UTILIZATION

RFP # FY18-RFP-07

FIRE EXTINGUISHER PRODUCTS AND SERVICES

The City maintains a strong commitment to the inclusion of MWSBEs in the City's contracting and procurement process when there are viable subcontracting opportunities.

Companies must submit this form with their proposal outlining any supplies and/or services to be provided by each City certified Small Business Enterprise (SBE), and/or City registered Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE) for the Contract. If the Company is a City-registered MWSBE, note that on this form.

The City recommends you exhaust all efforts when identifying potential MWSBEs to participate on this RFP.

Company Name:	
----------------------	--

Please indicate if **your company** is any of the following:

☐ MBE ☐ WBE ☐ SBE ☐ None of the above

If your company has been certified with any of the agencies affiliated with the designations above, indicate which agency, the effective and expiration date of that certification below:

Agency Certifying: _____ Effective Date: _____ Expiration Date: _____

Identify outreach efforts that were employed by the firm to maximize inclusion of MWSBEs to be submitted with the firm's proposal (attach additional sheets if needed):

Identify outreach efforts that will be employed by the firm to maximize inclusion during the contract period of the Project (attach additional sheets if needed):

[Form continues on next page]

Section 6 Required Forms

List below all **MWSBEs** that you intend to subcontract to while performing the Services:

Subcontractor Name	Description of work or materials	Indicate either "M", "S", and/or "W"	City Vendor #

Total MBE Utilization	%
Total WBE Utilization	%
Total SBE Utilization	%
Total MWSBE Utilization	%

Section 6

Required Forms

REQUIRED FORM 5 – COMPANY’S BACKGROUND RESPONSE

RFP # FY18-RFP-07

FIRE EXTINGUISHER PRODUCTS AND SERVICES

Companies shall complete and submit the form below as part of their response to this RFP. Additional pages may be attached as needed to present the information requested.

Question	Response
Company’s legal name	
Company Location (indicate corporate headquarters and location that will be providing the Services).	
How many years has your company been in business? How long has your company been providing the Services as described in Section 3?	
How many public sector (cities or counties) clients does your company have? How many are using the Services? Identify by name some of the clients similar to City (e.g., similar in size, complexity, location, type of organization).	
List any projects or services terminated by a government entity. Please disclose the government entity that terminated and explain the reason for the termination.	
List any litigation that your company has been involved with during the past two (2) years for Services similar to those in this RFP.	
Provide an overview and history of your company.	
If your company is a subsidiary, identify the number of employees in your company or division and the revenues of proposing company or division.	
Identify the percentage of revenue used for research and/or development by the proposing company or division.	
Identify any certifications held by your company if you are implementing or reselling another company's products or services. Include how long the partnership or certification has been effect.	
Describe your company’s complete corporate structure, including any parent companies, subsidiaries, affiliates and other related entities.	
Describe the ownership structure of your company, including any significant or controlling equity holders.	

Section 6

Required Forms

Provide a management organization chart of your company's overall organization, including director and officer positions and names and the reporting structure.	
Describe the key individuals along with their qualifications, professional certifications and experience that would comprise your company's team for providing the Services.	
Explain how your organization ensures that personnel performing the Services are qualified and proficient.	
Provide information regarding the level of staffing at your organization's facilities that will be providing the Services, as well as the level of staffing at subcontractors' facilities, if known or applicable.	
If your company has been the subject of a dispute or strike by organized labor within the last five (5) years, please describe the circumstances and the resolution of the dispute.	
Describe your security procedures to include physical plant, electronic data, hard copy information, and employee security. Explain your point of accountability for all components of the security process. Describe the results of any third party security audits in the last five (5) years.	

Section 6

Required Forms

REQUIRED FORM 6 – REFERENCES

RFP # FY18-RFP-07

FIRE EXTINGUISHER PRODUCTS AND SERVICES

Companies shall complete the form below. The City's preference is for references from organizations of similar size or where the Company is performing similar services to those described herein. If such references are not available, individuals or companies that can speak to the Company's performance are adequate.

Reference 1	
Company Name	
Contact Name	
Phone Number	
Reference 2	
Company Name	
Contact Name	
Phone Number	
Reference 3	
Company Name	
Contact Name	
Phone Number	
Reference 4	
Company Name	
Contact Name	
Phone Number	
Reference 5	
Company Name	
Contact Name	
Phone Number	

REQUIRED FORM 7 – ADDITIONAL COMPANY QUESTIONS

Companies shall include responses to the additional questions posed below. Responses may be provided on a separate sheet provided that such response clearly includes the question reference numbers.

Questions:

1. What steps will your organization take to ensure that the transition of Services runs smoothly?
2. Prepare and submit a Project Plan to describe all times, tasks and resources associated with the performance of Services.
3. Describe the communications scheme that your organization will use to keep the City informed about the Services.
4. Describe the risks associated with this Contract. What contingencies have been built in to mitigate those risks?
5. Service/Maintenance/Repair: In Detail explain what actions are included when you provide this level of service?
6. Provide a schedule/timeline your company to visit each location, take inventory and create a Fire Equipment Database? How would your company maintain the Fire Equipment Database?
7. Training: In detail, how long has your company been providing Fire Equipment Training, Maintenance, & Inspection Services to local government agencies.
8. Training: In detail include information regarding what is including in your training to ensure employees are trained successfully.

Section 6 Required Forms

REQUIRED FORM 8 SAFETY ASSESSMENT FORM



Contractor Safety Assessment

1. Organization Information:		
Company Name: _____		
On-Site Representative: _____	Phone #: _____	
Email: _____		
Safety Representative: _____	Phone #: _____	
Email: _____		
2. Safety-Program Documentation:		
	Yes	N/A
• Does your company have a written safety and health program that is available upon request?	_____	_____
• Are your employees current on all applicable safety-related training?	_____	_____
• Provide copies of your OSHA annual summary (Form 300A) for the past 3 years.	_____	_____
• Provide copies of any OSHA citations or violations for the past 3 years.	_____	_____
• Provide your company's NAICS* code.	_____	
	Year	DART Rate**
• What is your company's DART incidence rate for the past 3 years?	_____	_____
	_____	_____
	_____	_____
• What is your industry's DART incidence rate for the past 3 years?	_____	_____
	_____	_____
	_____	_____
<p>*NAICS - North American Industrial Classification System – If you need assistance with this information, please refer to the Bureau of Labor Statistics (BLS) website at www.bls.gov or contact a safety consultant.</p> <p>**DART Rate – If one of your past three-year DART incidence rate exceeded the industry standard, please attach an explanation as to why. As well your company DART incidence rate for the past five years.</p>		
3. Insurance-Coverage Documentation:		
	Yes	N/A
• A copy of your workers' compensation certificate of insurance	_____	_____
• A copy of your commercial general liability certificate of insurance	_____	_____
• A copy of your automobile liability certificate of insurance	_____	_____
• A copy of your professional liability certificate of insurance for errors and omissions	_____	_____
• A copy of your fidelity or performance bond	_____	_____
<p>Based on the scope of the project, insurance documentation must be submitted. Please refer to the insurance requirements on page 2 & 3 of this form for the City's insurance requirements.</p>		
4. Sign and date the form:		
Authorized Signature: _____	Date: _____	
Print Name: _____		

Section 6

Required Forms

REQUIRED FORM 9 – ENVIRONMENTAL PURCHASING RESPONSES

RFP # FY18-RFP-07

FIRE EXTINGUISHER PRODUCTS AND SERVICES

Companies shall complete and submit the form below regarding the products or supplies required to perform the Services.

Question	Response
<u>Recycled Content.</u> Products must contain a certain percentage of recycled content. Please include the amount of recycled content, both pre- and post-consumer, included in your product.	
<u>Recyclability.</u> Please include the types of materials included in your product, and if they are considered recyclable in typical municipal recycling streams.	
<u>Biodegradability.</u> Products must be capable of decomposing under natural conditions. Please state whether each Product offered in your proposal is biodegradable.	
<u>Compostability.</u> Products must be capable of composting at a commercial composting facility. Please state whether each product offered in your proposal is compostable.	
<u>Energy Consumption.</u> Please include the total amount of energy consumed for product or service manufacture, use and disposal. Different sources of energy are associated with different environmental impacts.	
<u>Energy Efficiency.</u> Products must meet or exceed the Department of Energy (DOE) and Environmental Protection Agency criteria for use of the ENERGY STAR trademark label; or is in the upper 25% of efficiency for all similar products as designated by the U.S. Department of Energy's Federal Energy Management Program.	
<u>Water Efficiency.</u> Eligible products must meet or exceed the Environmental Protection Agency's WaterSense program, or be water-efficient	

Section 6

Required Forms

or low-flow fixtures.	
<u>Low VOCs.</u> Products should contain low or no volatile organic compounds (VOCs). Please indicate any VOC content in each applicable product offered in your proposal.	
<u>Reduced Packaging.</u> Please include any efforts made to reduce the packaging of the products included in this proposal.	
<u>Pollution Prevention.</u> Please state your company's policy on source reduction. The Pollution Prevention Act defines source reduction to mean any practice that: (1) Reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal, and (2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants. The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control.	
<u>Life Cycle Management.</u> Please state how many times your product may be reused. (Since reusable products generally require more upfront costs than disposable products, they are often subjected to a cost/benefit analysis in order to determine the life cycle cost).	
<u>End of Life Management.</u> Will the manufacturer or designee accept the product back at the end-of-life? (who pays for the transportation of the product may be situation-specific).	

Exhibit A –Contract Terms and Conditions

EXHIBIT A –CONTRACT TERMS AND CONDITIONS

Parties will execute a contract similar to the contract terms and conditions as used in this Section of the ITB. The term “Contract” shall refer to the agreement entered into between the City and the Supplier, and the term “Company” shall refer to the Supplier.

As used in this Section of the RFP, the term “Contract” shall refer to the agreement entered into between the City and the Company, and the term “Company” shall refer to the vendor that has been awarded a contract.

RECITALS

WHEREAS, the City issued a Request For Proposals (RFP # FY18-RFP-07) for FIRE EXTINGUISHER PRODUCTS AND SERVICES dated JANUARY 31, 2018. This Request for Proposals together with all attachments and addenda, is referred to herein as the “RFP”; and

WHEREAS, the City desires that the Company provide certain FIRE EXTINGUISHER PRODUCTS AND SERVICES (“Services”), and the Company desires to provide such Services; and

WHEREAS, the City and the Company have negotiated and agreed regarding the above-referenced Services and desire to reduce the terms and conditions of their agreement to this written form.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

CONTRACT

1. EXHIBITS.

The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to COMPANY NAME in the Exhibits and Appendices shall be deemed to mean the Company.

1.1. EXHIBIT A: PRICE SCHEDULE

1.2. EXHIBIT B: SCOPE OF WORK

2. DEFINITIONS.

This section may include, but not be limited to, terms defined in Section 1 of the RFP.

3. DESCRIPTION OF SERVICES.

3.1. The Company shall be responsible for providing the Services described in Exhibit B attached to this Contract and incorporated herein by reference. Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit B. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit B.

3.2. The Company shall perform the Services on site at the City’s facility in Charlotte, North Carolina, except as mutually agreed upon in writing in specific instances by the City.

4. COMPENSATION.

4.1. The city shall pay the company for the products and services delivered in compliance with the specifications at the unit prices set forth in Exhibit A. This amount

Exhibit A –Contract Terms and Conditions

constitutes the maximum fees and charges payable to the company in the aggregate under this contract and will not be increased except by a written amendment duly executed by both parties.

The company shall not be entitled to charge the city any prices, fees or other amounts that are not listed in Exhibit A.

4.2. **PRICE ADJUSTMENT.**

The price(s) stated in Exhibit A shall not increase for the entire first two-year term of the Contract. The prices shall not increase during the second two-year renewal option terms unless the City approves a price adjustment in writing in accordance with the following terms:

- 4.2.1 Price increases shall only be allowed when justified in the City's sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs, or for additional profit.
- 4.2.2 To obtain approval for a price increase, the Company shall submit a written request to the Procurement Officer, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally proposed.

City of Charlotte
Charlotte Water
5100 Brookshire Boulevard
Charlotte, NC 28216
- 4.2.3 No proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of the Contract.
- 4.2.4 If the City approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the City shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the City in writing if the market factors on which the City granted the increase change such that the City's reasons for granting the increase longer apply.

- 4.3. No proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of the Contract.

- 4.4. If a Product becomes unavailable, or if a new Product becomes available, the Company promptly will send the City a proposed revised version of Exhibit A. The City reserves the right to add or delete items to this Contract if particular items

Exhibit A –Contract Terms and Conditions

should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added may be subject to bid statute requirements. The City may also delete radio and communication equipment items included in this Contract if items are no longer needed or no longer issued as part of radios and communication equipment. At no additional cost to the City, the Company may substitute any Product or Service to be provided by the Company, if the substitute meets or exceeds the Specifications, is compatible with the City's operating environment and is of equivalent or better quality to the City. Any substitution will be reflected in a written signed change order.

4.5. **NO EXPENSES CHARGEABLE.**

The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.

4.6. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.**

The Company represents and warrants that the employees provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company employee. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions that are required by law for each Company employee. The Company agrees that the Company employees are not employees of the City.

4.7. **INVOICES.**

Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract. All invoices must include the City purchase order number for purchases made under the Contract. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.

The Company shall email all invoices to cocap@charlottenc.gov with Accounts Payable (or AP) in the subject line.

Invoices that are addressed directly to City departments and not to Accounts Payable may not be handled as quickly as invoices that are addressed correctly.

4.8. **DUE DATE OF INVOICES.**

Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.

4.9. **PRE-CONTRACT COSTS.**

The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.

4.10. **AUDIT.**

During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of

Exhibit A –Contract Terms and Conditions

\$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.

5. RECORDS.

The Company shall be responsible for keeping a record that accurately states the type of Service performed. The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under the Contract, and shall not be required to pay for Services which did not occur, or which occurred in breach of the Contract. The Company shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday, whenever requested by the City.

6. TIME IS OF THE ESSENCE.

Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit B, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.

7. NON-APPROPRIATION OF FUNDS.

If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

8. COMPANY PROJECT MANAGER.

The duties of the Company Project Manager include, but are not limited to:

- 8.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;
- 8.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
- 8.3. Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
- 8.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
- 8.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
- 8.6. Communication among and between the City and the Company's staff;
- 8.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
- 8.8. Identifying and providing the City with timely written notice of all issues that may

Exhibit A –Contract Terms and Conditions

threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);

- 8.9. Ensuring that adequate quality assurance procedures are in place throughout the Contract; and
- 8.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.

9. CITY PROJECT MANAGER.

The duties of the City Project Manager are to (1) ensure that the Company delivers all requirements and specifications in the Contract; (2) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Contract; (3) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (4) act as the City's point of contact for all aspects of the Services including contract administration and coordination of communication with the City's staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business day's notice to the Company.

10. DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.

The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those that Exhibit B specifically requires the City to provide, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii) that the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

11. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.

- 11.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing.
- 11.2. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

12. BACKGROUND CHECKS.

Exhibit A –Contract Terms and Conditions

Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the “Background Checks”). Each Background Check must include: (a) the person’s criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (b) a reference check.

After starting work under this Contract, the Company is required to perform a Background Check for each new Company employee assigned to work under this Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company employee assigned to work on the project, and shall require its subcontractors (if any) to do the same for each of their employees.

The Company must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The Company shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the Company as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

13. ACCEPTANCE OF TASKS AND DELIVERABLES.

Within a reasonable time after a particular Deliverable has been completed (or such specific time as may be set forth in Exhibit B), the Company shall submit a written notice to the City’s Project Manager stating the Deliverable(s) that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s).

If the City Project Manager is not satisfied that the Deliverable(s) has been met, a notice of rejection (a “Rejection Notice”) shall be submitted to the Company by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a Rejection Notice, the Company shall: (a) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (b) immediately upon completing such corrections give the City a written, dated certification that all deficiencies have been corrected (the “Certification”). In the event the Company fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within thirty- (30) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Company and without obligation to pay for the defective work.

Upon receipt of the corrected Deliverable(s), or a Certification, whichever is later, the above-described Acceptance procedure shall recommence. The City shall not be obligated to allow the Company to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

14. NON-EXCLUSIVITY.

The Company acknowledges that it is one of several providers of Professional Services to the City and the City does not represent that it is obligated to contract with the Company for any particular project.

Exhibit A –Contract Terms and Conditions

15. EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.

Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.

16. REPRESENTATIONS AND WARRANTIES OF COMPANY.

16.1. GENERAL WARRANTIES.

- 16.1.1. The Services shall satisfy all requirements set forth in the Contract, including but not limited to the attached Exhibits;
- 16.1.2. The Services provided by the Company under the Contract will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party;
- 16.1.3. The Company has taken and will continue to take sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under the Contract by virtue of interruptions in the computer systems used by the Company;
- 16.1.4. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 16.1.5. Neither the Services, nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
- 16.1.6. The Company and each Company employee provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit B;
- 16.1.7. All information provided by the Company about each of their employees is accurate; and
- 16.1.8. Each Company employee is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such employees.

16.2. ADDITIONAL WARRANTIES.

The Company further represents and warrants that:

- 16.2.1. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
- 16.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 16.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
- 16.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 16.2.5. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all

Exhibit A –Contract Terms and Conditions

applicable permits and licenses; and

- 16.2.6. The performance of this Contract by the Company and each Company employee provided by the Company will not violate any contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

17. OTHER OBLIGATIONS OF THE COMPANY.

17.1. WORK ON CITY'S PREMISES.

The Company and all their employees will, whenever on the City's premises, obey all instructions and City policies that are provided to them with respect to performing Services on the City's premises.

17.2. RESPECTFUL AND COURTEOUS BEHAVIOR.

The Company shall assure that its employees interact with City employees and with the public in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.

17.3. REPAIR OR REPLACEMENT OF DAMAGE EQUIPMENT OR FACILITIES.

In the event that the Company causes damage to the City's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.

17.4. REGENERATION OF LOST OR DAMAGED DATA.

With respect to any data that the Company or any Company employees have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City's data sources.

17.5. E-VERIFY.

Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

17.6. IRAN DIVESTMENT ACT.

Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

18. REMEDIES.

18.1. RIGHT TO COVER.

If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:

- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the

Exhibit A –Contract Terms and Conditions

Company is again able to resume performance under this Contract; and

- b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.

18.2. RIGHT TO WITHHOLD PAYMENT.

If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.

18.3. SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.

The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches the Contract.

18.4. SETOFF.

Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.

18.5. OTHER REMEDIES.

Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

19. TERM AND TERMINATION OF CONTRACT.

19.1. TERM.

This Contract shall commence on the Effective Date and shall continue in effect for Two (2) years with the City having the unilateral right to renew for One (1) consecutive two (2) year terms.

19.2. TERMINATION BY THE CITY.

The City may terminate the Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The forgoing payment obligation is contingent upon: (i) the Company having fully complied with Section 19.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Company employee through the termination date and the percentage of completion of each task.

19.3. TERMINATION WITHOUT CAUSE.

The City may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the City.

Exhibit A –Contract Terms and Conditions

19.4. TERMINATION FOR DEFAULT BY EITHER PARTY.

By giving written notice to the other party, either party may terminate the Contract upon the occurrence of one or more of the following events:

- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in the Contract, provided that, unless otherwise stated in the Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- b. The other party attempts to assign, terminate or cancel the Contract contrary to the terms hereof; or
- c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default shall identify this Section of the Contract and shall state the party's intent to terminate the Contract if the default is not cured within the specified period.

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company's written termination notice; or (ii) the date on which the City completes its transition to a new service provider.

19.5. ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.

By giving written notice to the Company, the City may also terminate the Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- a. Failure of the Company to complete a particular task by the completion date set forth in this Contract;
- b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of the Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by the Contract, or failure to provide the proof of insurance as required by the Contract.

19.6. NO SUSPENSION.

In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in the Contract, the Company agrees that it will not terminate the Contract or suspend or limit the Services or any

Exhibit A –Contract Terms and Conditions

warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

19.7. CANCELLATION OF ORDERS AND SUBCONTRACTS.

In the event this Contract is terminated by the City for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.

19.8. AUTHORITY TO TERMINATE.

The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (b) the Department Director of the City Department responsible for administering this Contract.

19.9. OBLIGATIONS UPON EXPIRATION OR TERMINATION.

Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding “Confidential Information”, as defined in this Contract.

19.10. NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.

Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

19.11. OTHER REMEDIES.

The remedies set forth in this Section and Section 21 shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.

20. TRANSITION SERVICES UPON TERMINATION.

Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to shift the Services of the Company to another provider or to the City itself as described below (the “Transition Services”). Transition Services may include but shall not be limited to the following:

- Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
- Notifying all affected service providers and subcontractors of the Company;

Exhibit A –Contract Terms and Conditions

- Performing the Transition Services;
- Answering questions regarding the Services on an as-needed basis; and
- Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

21. CHANGES.

In the event changes to the Services (collectively “Changes”), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties that expressly references and is attached to this Contract (a “Change Statement”). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price.

In the event either party desires a Change, the Project Manager for such party shall submit to the other party’s Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.

Changes that involve or increase in the amounts payable by the City may require execution by the City Manager or a designee depending on the amount. Some increases may also require approval by Charlotte City Council.

22. CITY OWNERSHIP OF WORK PRODUCT.

22.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the “Intellectual Property”). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.

22.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City’s prior written consent, and shall treat the Intellectual Property as “Confidential Information” pursuant to Section 26 of the Contract.

22.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.

Exhibit A –Contract Terms and Conditions

23. RELATIONSHIP OF THE PARTIES.

The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other, or any Company employee an agent or employee of the City, for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.

24. INDEMNIFICATION.

To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; (iii) arising from the Company’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker’s compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term “Indemnitees” means the City and each of the City’s officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term “Charges” means any and all losses, damages, costs, expenses (including reasonable attorneys’ fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

This Section 24 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

25. SUBCONTRACTING.

Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain fully responsible for performance of all obligations that it is required to perform under the Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

26. CONFIDENTIAL INFORMATION.

26.1. CONFIDENTIAL INFORMATION.

Exhibit A –Contract Terms and Conditions

Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:

- 26.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 26.1.2. *Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”*
- 26.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*
- 26.1.4. *Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 26.1.5. *Citizen or employee social security numbers collected by the City.*
- 26.1.6. *Computer security information of the City,* including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 26.1.7. *Local tax records of the City that contains information about a taxpayer’s income or receipts.*
- 26.1.8. *Any attorney / City privileged information disclosed by either party.*
- 26.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 26.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 26.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 26.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 26.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories stated in Sections 26.1.3 through 26.1.13 above constitute “Highly Restricted Information,” as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more

Exhibit A –Contract Terms and Conditions

restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

26.2. RESTRICTIONS.

The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 26.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 26.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 26.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 26.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 26.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 26.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 26.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

26.3. EXCEPTIONS.

The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:

- 26.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
- 26.3.2. Was or becomes publicly known through no wrongful act of the Company;

Exhibit A –Contract Terms and Conditions

- 26.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
- 26.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
- 26.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
- 26.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.

26.4. **UNINTENTIONAL DISCLOSURE.**

Notwithstanding anything contained herein in to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.

26.5. **REMEDIES.**

The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

27. INSURANCE.

27.1. **TYPES OF INSURANCE.**

Company shall obtain and maintain during the life of this Contract, with an insurance Company rated not less than “A” by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the Charlotte-Mecklenburg, Risk Management Division the following insurance:

- 27.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- 27.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal and advertising injury, and contractual liability, assumed under the indemnity

Exhibit A –Contract Terms and Conditions

provision of this Contract.

- 27.1.3. Workers' Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

27.2. **OTHER INSURANCE REQUIREMENTS.**

- 27.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

- 27.2.2. The City of Charlotte shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.

- 27.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.

- 27.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.

- 27.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

28. COMMERCIAL NON-DISCRIMINATION.

As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

Exhibit A –Contract Terms and Conditions

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

29. NOTICES AND PRINCIPAL CONTACTS.

Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For the Company:

PHONE: _____

FAX: _____

E-MAIL: _____

For the City:

Monica Henson
Charlotte Water
Procurement
5100 Brookshire Blvd.
Charlotte, NC 28216
PHONE: 704-391-5081
FAX: 980-207-9381
mahenson@charlottenc.gov

With Copy To (Company):

PHONE: _____

EMAIL: _____

With Copy To (City):

Thomas Powers
City of Charlotte
City Attorney's Office
600 East Fourth Street
CMGC 15th Floor
Charlotte, NC 28202
PHONE: (704)336-5877
tpowers@ci.charlotte.nc.us

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice, which is sent by telefax or electronic mail, shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

30. MISCELLANEOUS.

Exhibit A –Contract Terms and Conditions

30.1. ENTIRE AGREEMENT.

This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.

30.2. AMENDMENT.

No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.

30.3. GOVERNING LAW AND JURISDICTION.

The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina, and will be performed in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

30.4. BINDING NATURE AND ASSIGNMENT.

This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

30.5. CITY NOT LIABLE FOR DELAYS.

It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City or any other party hereunder caused by injunction or other legal or equitable proceedings or on account of any other delay for any cause beyond the City's reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.

30.6. FORCE MAJEURE.

30.6.1. The Company shall be not liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.

30.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a "Force Majeure Event") the Company shall be excused from any further performance of those of its obligations pursuant to this Contract

Exhibit A –Contract Terms and Conditions

affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

30.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.

30.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.

30.7. **SEVERABILITY.**

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

30.8. **NO PUBLICITY.**

No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.

30.9. **APPROVALS.**

All approvals or consents required under this Contract must be in writing.

30.10. **WAIVER.**

No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.

30.11. **SURVIVAL OF PROVISIONS.**

The following sections of this Contract shall survive the termination hereof:

Section "Employment Taxes and Employee Benefits"
Section "Representations and Warranties of Company"
Section "Term and Termination of Contract"
Section "City Ownership of Work Product"
Section "Indemnification"
Section "Confidential Information"
Section "Insurance"
Section "Notices and Principal Contacts"
Section "Miscellaneous"

Exhibit A –Contract Terms and Conditions

30.12. CHANGE IN CONTROL.

In the event of a change in “Control” of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term “Control” shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.

30.13. DRAFTER’S PROTECTION.

Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

30.14. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.

The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.

30.15. CONFLICT OF INTEREST.

The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.

30.16. NO BRIBERY.

The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.

30.17. HARASSMENT.

The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.

30.18. TRAVEL UPGRADES.

The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company’s invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage,

Exhibit A –Contract Terms and Conditions

points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.

30.19. **TAXES.**

Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

30.20. **COUNTERPARTS.**

This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.